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6-13-16
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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of California-American Water Company (U210W) for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates.

A.12-04-019
(Filed April 23, 2012)

**JOINT REPLY BRIEF ON PHASE 2 ISSUES OF CALIFORNIA-AMERICAN
WATER COMPANY, MONTEREY PENINSULA WATER MANAGEMENT
DISTRICT, MONTEREY REGIONAL WATER POLLUTION CONTROL
AGENCY, MONTEREY PENINSULA REGIONAL WATER AUTHORITY, AND
PLANNING AND CONSERVATION LEAGUE**

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SUMMARY

The Joint Parties request the California Public Utilities Commission (“Commission”) expedite approval of portions of California-American Water Company’s (“Cal Am”) application and issue a Phase 2 decision allowing Cal Am to take full advantage of two alternative water sources: (1) the Monterey Regional Water Pollution Control Agency’s (“Agency”) and the Monterey Peninsula Water Management District’s (“District”) Pure Water Monterey Groundwater Replenishment Project (“GWR Project”) and (2) the Aquifer Storage and Recovery (“ASR”). As explained in detail in their Opening Brief and this Reply Brief on Phase 2, the Joint Parties request that the Commission:

1. Authorize Cal Am to enter into the revised Water Purchase Agreement between Cal Am, the District and the Agency. All parties, with the exception of Water Plus, strongly support granting prompt authorization for Cal Am to enter into the revised Water Purchase Agreement. The Commission should reject Water Plus’s unsupported arguments, acknowledge the consensus among all the remaining parties, and promptly approve the revised Water Purchase Agreement.

2. Approve Cal Am’s construction of the Monterey pipeline and pump station facilities because (a) there is a proven independent need for the Monterey Pipeline because existing infrastructure cannot fully deliver extracted ASR and GWR water, (b) the record contains ample evidence of the independent need for the pipeline and pump station, and (c) nothing indicates that future decisions on the Monterey Peninsula Water Supply Project will impact the final design of the pipeline or pump station.

3. Approve the proposed financing and ratemaking related to the Monterey pipeline and pump station facilities. No party opposed the proposed financing and ratemaking in their opening briefs, and there is no testimony on the record objecting to the proposed financing and ratemaking treatment.

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JOINT REPLY BRIEF ON PHASE 2 ISSUES OF CALIFORNIA-AMERICAN WATER COMPANY, MONTEREY PENINSULA WATER MANAGEMENT DISTRICT, MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY, MONTEREY PENINSULA REGIONAL WATER AUTHORITY, AND PLANNING AND CONSERVATION LEAGUE

Pursuant to Rule 13.11 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the April 25, 2016 Assigned Commissioner and Administrative Law Judge’s Ruling Conditionally Granting Joint Motion for A Separate Phase 2 Decision and Setting Hearing (the April 25 ACR), and the briefing schedule established at the May 26, 2016 hearing, California-American Water Company (“Cal Am”), the Monterey Peninsula Water Management District (“District”), the Monterey Regional Water Pollution Control Agency (“Agency”), the Monterey Peninsula Regional Water Authority (“Water Authority”), and the Planning and Conservation League Foundation (“PCL”) (collectively, the “Joint Parties”) hereby jointly submit this Reply Brief on Phase 2 issues.¹

¹ Cal Am files this Joint Reply Brief on behalf of the above-named parties and provides electronic signatures in accordance with Rule 1.8 of the Commission’s Rules of Practice and Procedure.

I. INTRODUCTION

On June 6, 2016, the Joint Parties filed their Opening Brief and provided detailed support for a Commission decision: (a) authorizing Cal Am to enter into the revised Water Purchase Agreement with the District and the Agency for water produced by the Pure Water Monterey Groundwater Replenishment Project (“GWR WPA”); (b) authorizing Cal Am to construct the Monterey pipeline and pump station; (c) allowing Cal Am to file two Tier 2 advice letters to place the costs of the Monterey pipeline and pump station in service for recovery in base rates. In addition to the Joint Parties, Surfrider Foundation, Landwatch Monterey County, the Planning and Conservation League, and Sierra Club filed a Joint Phase 2 Opening Brief and Partial Joinder (“Joint Environmental Parties Brief”), and Marina Coast Water District (“MCWD”), the Office of Ratepayer Advocates (“ORA”), Public Trust Alliance (“PTA”), and Water Plus each filed individual Opening Briefs.²

As detailed further below, the Opening Briefs almost unanimously support authorization of the GWR WPA in a separate Phase 2 decision in this proceeding. Only Water Plus raises reservations, based primarily on matters not even part of the record in this proceeding. Based on this widespread support, the Commission has ample grounds to authorize the GWR WPA. With

² This Reply Brief will not address issues raised by intervenors in their opening briefs that are outside the scope of Phase 2. For example, PTA’s Opening Brief raises issues that are outside the scope of Phase 2 of the proceeding, including climate change (pp. 13-15, 22-25, 40-41), various aspects of recycled water (pp. 15-18), changes in groundwater regulation (pp. 18-22), and the public trust doctrine (pp. 23-24). Similarly, PTA spends a considerable portion of its Opening Brief discussing whether desalination is the best option to address the Monterey Peninsula’s water supply constraints (pp. 12-13) an issue that is not within the scope of this Phase 2 of this proceeding. See *Assigned Commissioner and Administrative Law Judge’s Ruling Conditionally Granting Joint Motion for a Separate Phase 2 Decision and Setting Hearing* (April 25 Ruling), pp. 2, 6-10 (describing the three issues that will now be considered as part of Phase 2. The April 25 Ruling identified several sub-issues related to these three issues, but these did **not** include consideration of the desalination facilities, climate change or other issues that PTA raised in its opening brief. PTA’s attempt to introduce issues that are outside of the scope of this phase is inappropriate and the Commission should disregard these portions of PTA’s Opening Brief.

regard to the Monterey pipeline and pump station, the other parties are either silent or express levels of doubt that there is independent need for these facilities. The Joint Parties anticipated and have already addressed most of the arguments in their Opening Brief, but again demonstrate here that the Monterey pipeline and pump station have independent need both to deliver GWR product water and to maximize use of the ASR.

II. ARGUMENT

A. THE GWR WPA SHOULD BE APPROVED

1. There is Widespread Support for Approval of the GWR WPA

In the Joint Opening Brief, Cal Am, the District and the Agency provided a detailed analysis demonstrating that each of the nine criteria identified by the parties to the proceeding in the Large Settlement Agreement³ has been met.⁴ For each criterion, citations to specific record evidence were presented and provide ample support for prompt Commission action authorizing Cal Am to enter into the revised GWR WPA attached to the May 19, 2016 Joint Rebuttal Testimony.⁵

Significantly, all other parties, with the exception of Water Plus, that submitted opening briefs in this proceeding expressed their strong support for the GWR Project and prompt authorization of the GWR WPA and, in doing so, highlighted the many benefits associated with the GWR Project. ORA, for example, described the GWR Project as “the most advantageous

³ A.12-04-019, *Settlement Agreement of California-American Water Company, Citizens for Public Water, City of Pacific Grove, Coalition of Peninsula Businesses, County of Monterey, Division of Ratepayer Advocates, LandWatch Monterey County, Monterey County Farm Bureau, Monterey County Water Resources Agency, Monterey Peninsula Regional Water Authority, Monterey Peninsula Water Management District, Monterey Regional Water Pollution Control Agency, Planning and Conservation League Foundation, Salinas Valley Water Coalition, Sierra Club, and Surfrider Foundation*, July 31, 2013 (“Large Settlement Agreement”).

⁴ Joint Opening Brief, pp. 10-25.

⁵ Exh. JE-3, Joint Rebuttal Testimony, Attachment 1.

water supply option...” providing the “significant benefit of certainty” as well as other “non-monetary benefits.”⁶ ORA also confirmed that, with the revisions to the GWR WPA from the January 2016 draft, the terms of the GWR WPA are just and reasonable.⁷ MCWD also expressed its strong support for the GWR WPA noting that “approval of the WPA (as well as the Pump and Pipeline) would make a significant contribution to reverse the ongoing environmental damage to the Carmel River ecosystem... [and] bring to a close many decades of needless contention and frustration among numerous stakeholders in the Monterey County community.”⁸ ORA and MCWD each concur that all nine of the criteria from the Large Settlement agreement have been met.⁹

The public interest and environmental benefits of the GWR Project were also highlighted in the briefs. The Joint Environmental Parties described prompt action on the GWR WPA as offering “the Commission a unique opportunity to help solve ongoing water supply deficiencies on the Monterey Peninsula while simultaneously protecting the environment and advancing state water use policies.”¹⁰ These groups also specifically identified environmental benefits associated with the GWR Project such as reduced impacts on the Carmel River ecosystem, reduced impacts from the larger desalination project, and mitigation of seawater intrusion into the Salinas Valley Groundwater Basin.¹¹ Similarly, PTA expressed its support for “the GWR Project as a forward-looking project in the public interest” and further indicated that the GWR

⁶ ORA Opening Brief, p. 5.

⁷ *Id.*, pp. 8-9.

⁸ MCWD Opening Brief, pp. 1, 12.

⁹ ORA Opening Brief, pp. 5-10; MCWD Opening Brief, pp. 12-16.

¹⁰ Joint Environmental Parties Opening Brief, p. 1.

¹¹ *Id.*, pp. 5-9.

Project “presents significant environmental and cost benefits and is consistent with community values, both as they are and as they should be.”¹²

In any Commission proceeding, it is rare to have consensus on a major issue as widespread as that now enjoyed by the GWR Project. Given the contentious nature of this proceeding -- and the difficulty in finding a viable solution to the water supply problem in the Monterey region -- this consensus is particularly striking. The Commission should acknowledge this unique alignment and promptly approve the GWR WPA.

2. Arguments Raised by Water Plus Do Not Support Delay in Approval of the GWR WPA

There is only one party who opposes the Commission’s approval of the WPA -- Water Plus. As a preliminary matter, Water Plus does not appear to understand the issues pending before the Commission, as demonstrated by its repeated references to the grant of a CPCN for the GWR Project.¹³ As the Commission is aware, the GWR Project is not under the jurisdiction of the Commission and does not require the grant of a CPCN. Rather, the Commission is evaluating whether to authorize Cal Am to enter into the GWR WPA. That aside, Water Plus’s arguments largely address issues outside of the scope of this proceeding, rely on evidence outside of the record, or are wholly unsupported by any evidence whatsoever.¹⁴ For instance, Water Plus’s assertions relating to purported safety concerns are not based in evidence or valid science, but rather are largely unsupported opinion rebutted by extensive expert testimony

¹² PTA Opening Brief, pp. 1, 24.

¹³ *See, e.g.*, Water Plus Opening Brief, pp. 2, 6, 9, 12, 13.

¹⁴ For example, Water Plus dedicates large portions of its Opening Brief to arguments concerning an unrelated grower recycling agreement. Water Plus Opening Brief, pp. 5-9. Such agreement does not relate to the issues before the Commission at this time.

provided by the Agency.¹⁵ Water Plus's allegations of outrageous costs per acre foot of product water are equally unsupported and are also contradicted by the plain terms of the proposed GWR WPA, and by testimony presented by Cal Am, the District, the Agency, and ORA.¹⁶ As such, the Commission should give no weight to Water Plus's sole opposition to a much needed and safe source of water for the Monterey Peninsula.

B. THERE IS PROVEN INDEPENDENT NEED FOR THE MONTEREY PIPELINE AND PUMP STATION, SO THEY SHOULD BE APPROVED IN PHASE 2 OF THIS PROCEEDING

The Joint Opening Brief, Cal Am, the District, the Agency, the Water Authority, and PCL made clear the Monterey pipeline and pump station are necessary – independent of any future desalination plant – to maximize GWR and ASR Project benefits.¹⁷ The Joint Opening Brief also showed the record in this proceeding contains ample evidence of that independent need, so construction of the Monterey pipeline and pump station should be approved in Phase 2 of this proceeding.¹⁸

In its Opening Brief, ORA opposes approval of the Monterey pipeline and pump station construction at this time. ORA's opposition rests on three claims (1) existing infrastructure is capable of maximizing GWR and ASR Project benefits, (2) independent necessity was not

¹⁵ See Water Plus Opening Brief, pp. 11-13. These arguments were rebutted by the opening and rebuttal testimony of Agency witness Nellor, Exh. PCA-4 and Exh. PCA-6; *see also*, Joint Parties Opening Brief, pp. 16-19.

¹⁶ At page 9 of the Water Plus Opening Brief, Water Plus makes unsupported allegations of GWR ratepayer costs "to as high as \$6,000 per acre foot." The sole record "evidence" for this claim is a citation to an Opinion piece prepared by Ron Weitzman, the President of Water Plus, appended to his May 19, 2016 Rebuttal Testimony, Exh. WP-9. As detailed in the Joint Parties Opening Brief, the WPA has a "soft cap" built into it. Joint Opening Brief, pp. 22-23. *See also*, ORA Opening Brief, pp. 8-10, in which ORA supports the WPA as being just and reasonable.

¹⁷ See Joint Opening Brief, pp. 25-32.

¹⁸ See, e.g., Exh. JE-2, Joint Supplemental Testimony, pp. 10:9 – 17:16; Exh. JE-4 to JE-8, Schematic Slides for Schematic; RT, pp.3152:9-3153:3; 3159:17-23; 3159:23-3160:1; 3162:12-3163:2; 3163:10-25; 3163:10-25; 3163:26-3164:4; 3185:19-24; 3196:22-24; 3196:28-3197:4-16; 3201:21-3203:23; 3207:3-11; 3204:4-21; 3205:9-20; and 3214:1-24.

demonstrated, and (3) future determinations concerning the MPWSP could impact the final Monterey pipeline design.¹⁹ As is discussed below, each of these claims falters beneath the weight of scrutiny, so construction of the pipeline and pump station should be approved in Phase 2 of the proceeding.

1. Existing Infrastructure Cannot Fully Deliver Extracted ASR and GWR Water or Fully Divert Excess Carmel River Water

ORA suggests the Monterey pipeline and pump station are not needed to maximize ASR and GWR benefits because existing infrastructure is sufficient to obtain full and complete ASR and GWR benefits.²⁰ This contention is not supported by the record.

First, as is discussed at length on pages 25 to 32 of the Joint Opening Brief, the record in this proceeding supports a finding that to take full advantage of the water from the ASR Project the Monterey pipeline and pump station are necessary. Similarly, to take full advantage of water from the GWR Project, the Monterey pipeline is necessary. Both the pipeline and pump station are necessary for these purposes independent of how the desalination plant proceeds.

Second, ORA's contention that current infrastructure is sufficient is inconsistent with ORA's other testimony that not enough information was provided "to determine the exact amount of additional capacity available in the existing system for ASR and GWR water."²¹ ORA cannot both claim that there is enough testimony to confirm current infrastructure is sufficient to maximize ASR and GWR benefits, and at the same time argue that there is not

¹⁹ ORA Opening Brief, pp. 10-11.

²⁰ *Id.* pp. 11 and 18-19.

²¹ ORA's contention also conflicts with its prior agreement. ORA has previously agreed that "avoiding delay in completion of the CAW-Only Facilities could allow California American Water to sooner maximize the ASR system and potentially reduce its pumping from the Carmel River during the summer months." Exh. CA-47, Pipeline Agreement, p. 2, Section 2.1. Thus, its claim that current infrastructure is sufficient to receive the full benefits of ASR and GWR is inconsistent with ORA's prior agreement that ASR could help maximize benefits.

enough information to determine whether ASR and GWR would benefit from the pipeline.

Thus, because ORA's position is inconsistent with its other arguments and based on an admittedly incomplete analysis, it should be ignored.

Third, ORA's arguments concerning extraction and injection at well locations are flawed. They do not focus on the entire system or how it operates.²² ORA's Opening Brief admits the Joint Supplemental Testimony pointed out there could be "other constraints on the system."²³ Indeed, the Joint Supplemental Testimony and testimony at the May 26, 2016 hearing provided evidence concerning those other constraints (such as the hydraulic trough, limits on diversion capacity because of current pipe sizing, and issues with moving water throughout the system), and explained why the pipeline and pump station were necessary to overcome those issues.²⁴ ORA's testimony and its Opening Brief do not directly address the detailed testimony on those system constraints. Rather, they focus simply on the wells, not how they must operate within the larger context of a system with constraints.

In addition, in focusing on the wells, ORA's analysis relies on mistaken presuppositions. For example, ORA's Opening Brief concludes that withdrawals are "distributed equally across the four quarters."²⁵ Nothing in the record supports such a contention. Indeed, the record states otherwise.²⁶ Withdrawals, of course, are not so evenly distributed. As one might expect, they are much higher in the summer than the winter,²⁷ so ORA's claims should be disregarded.

²² ORA Opening Brief, at pp. 12-13; for example, as is noted in the Joint Opening Brief, ORA seems to ignore the fact that in addition to ASR rights, Cal Am also needs to be able to add the Seaside Rights as well as GWR and other flows at the same time. The system cannot handle all of these multiple flows at once. *See* RT, p. 3167:9-25.

²³ ORA Opening Brief, p. 12.

²⁴ RT, pp. 3159:17-23; 3162:12 - 3163:2; 3201:21 – 3203:23; 3204:4-21; Exh. JE-2, Joint Supplemental Testimony, p. 14:14-21.

²⁵ ORA Opening Brief, p. 13.

²⁶ RT, pp. 3166:9-3167:8.

²⁷ *Ibid.*

Thus, existing infrastructure is not sufficient to maximize GWR and ASR Project benefits. Construction of the Monterey pipeline and pump station should be approved in Phase 2 of this proceeding

2. The Record Contains Ample Evidence of the Independent Need for the Pipeline and Pump Station

ORA's Opening Brief suggests there is insufficient evidence supporting the independent need for the Monterey pipeline²⁸ or the pump station.²⁹ That is not the case.

First, pages 26 to 35 of the Joint Opening Brief includes a lengthy, detailed discussion of why the evidence demonstrates an independent need for the pipeline and pump station.

Second, there is no merit to ORA's assertions that model outputs and other information are somehow necessary³⁰ and insufficient evidence of the hydraulic trough was presented.³¹ Such arguments are irrelevant with respect to the benefits to be provided by ASR and GWR or the independent need for the pipeline and pump station. Moreover, the changes have already been explained and justified.³²

Third, ORA suggests that any analysis of the pipeline and pump station is ostensibly more difficult because of differences in length or costs from previously proposed versions.³³ Such arguments are irrelevant with respect to the benefits to be provided to ASR and GWR. Moreover, they have already been explained and justified.³⁴

²⁸ ORA Opening Brief, p. 14.

²⁹ *Id.*, p. 20.

³⁰ *Id.*, pp. 14-15.

³¹ *Id.*, p. 16.

³² See Exh. JE-2, p. 15:18-19; RT, pp. 3207:3-11; 3159:17-23; 3201:21-3203:23; 3204:4-21; 3162:12-3163:2; 3205:9-20.

³³ ORA Opening Brief, pp. 15 and 20.

³⁴ See, e.g., Exh. PCL-8, *Amended Application*, filed March 14, 2016 in A.12-04-019, Appendix E; RT, p. 3165:4-21.

Fourth, ORA recognizes that “there previously was not necessarily a reason to evaluate the independent utility of the Monterey Pipeline, separate from serving the desalination plant.”³⁵ Nonetheless, ORA contends that it is somehow “significant that the concept of the ‘hydraulic trough’ and the independent necessity of the Monterey Pipeline was not presented for evaluation prior to May 9, 2016.”³⁶ ORA, however, does not explain or cite to any part of the record indicating why it would be significant.

Thus, the record contains sufficient information to approve construction of the pipeline and pump station in Phase 2 of this proceeding.

3. Nothing Indicates that Future Determinations on the MPWSP Will Impact the Final Design of the Pipeline or Pump Station

ORA argues that because of uncertainty concerning the final design of the MPWSP, “the prudent approach... would be for Cal Am to wait to construct the Monterey Pipeline” and pump station “until more certainty exists regarding the design of the desalination plant.”³⁷ As is noted above, however, the pipeline and pump station are necessary and independent of the need for the desalination plant.

Furthermore, ORA claims the delay would allow time to “determine appropriate design details... based on the results of the EIR,” “assess the changed system hydraulics,” and “minimize ratepayer risk.”³⁸ ORA, however, provides no details as to why this would be necessary and does not cite to anything in the record indicating that any of these purported

³⁵ ORA Opening Brief, pp. 15 - 16.

³⁶ *Id.*, pp. 15 - 16.

³⁷ *Id.*, pp. 17, 21-22.

³⁸ *Id.*, p.17.

reasons for delay are warranted.³⁹ In sum, there is no reason for the Commission to delay authorizing the construction of the pipeline and pump station in this proceeding.

4. The Record Supports the Proposed Financing and Ratemaking for the Cal Am Facilities

In their opening brief, the Joint Parties explained the proposed financing and ratemaking treatment for the Monterey pipeline and pump station.⁴⁰ As the Joint Parties noted, there is no testimony on the record objecting to the proposed financing and ratemaking treatment for these projects,⁴¹ nor was any opposition voiced in the opening briefs.

The financing and ratemaking treatment the Joint Parties propose for the Monterey pipeline and pump station is based on the Large Settlement Agreement, as well as traditional ratemaking for capital projects.⁴² Cal Am will track in a segregated section of the Cal Am Only Facilities memorandum account: (1) the costs of the Monterey pipeline and pump station (including AFUDC), (2) a pro-rated portion of the engineering and environmental costs of the entire Cal Am Only Facilities, (3) and any portion of the Monterey pipeline or pump station placed in service prior to the Commission approving the costs to be included in plant in service and recovered in base rates. In keeping with the Large Settlement Agreement, the memorandum account will draw interest at the actual cost to finance the project.⁴³ As the Monterey pipeline and pump station facilities become used and useful, they should be put into rates via two Tier 2

³⁹ *Id.* pp. 16-17; 21-22.

⁴⁰ Joint Opening Brief, pp. 39-44.

⁴¹ *Id.*, p. 39.

⁴² See California Public Utilities Commission, Division of Water & Audits, Standard Practice U-27-W, Processing CPI, Rate Base and Expense Offset Rate Increases and Amortizing Memorandum and Reserve Accounts

⁴³ Exh. JE-2, Joint Supplemental Testimony, p. 20.

advice letter filings.⁴⁴ Cal Am has agreed to fund \$7.4 million of the initial costs of the Monterey pipeline and pump station with short-term debt provided by its parent company.⁴⁵ The remaining costs will be funded with Cal Am's actual debt costs and equity in the most recent approved Commission ratio.⁴⁶

The estimated cost of the Monterey pipeline and pump station is \$50.3 million, which includes \$46.5 million for the pipeline and \$3.8 million for the pump station.⁴⁷ ORA's Opening Brief notes that the cost of the Monterey pipeline has increased since Cal Am presented its initial estimate in 2013.⁴⁸ This is not surprising, however, since the current cost estimate for the pipeline reflects an additional 6,000 feet in length,⁴⁹ more specific information regarding routing,⁵⁰ and, most importantly, actual construction bids.⁵¹ Simply put, with more recent and detailed information, Cal Am was able to provide a more accurate estimate. It is not unusual for the cost of certain components of a capital project to differ from the original estimates, particularly when there is a significant delay, such as in this proceeding. Additionally, these facilities would be subjected to a cost cap, just as was agreed to for the Cal Am Only Facilities in the Large Settlement Agreement.⁵²

⁴⁴ *Id.*, pp. 20-21. This is the same process proposed for the Cal-Am only facilities in the Large Settlement Agreement, §7.3(c).

⁴⁵ *Id.*, p. 21.

⁴⁶ *Id.*

⁴⁷ This estimate includes allocation of incurred and future implementation costs, and contingency. *Id.*, p. 16; *see also* Exh. CA-40, Supplemental Testimony of Richard C. Svindland, December 15, 2015, Attachment 1, p. 7 (providing pipeline and pump station costs).

⁴⁸ ORA Opening Brief, p. 15.

⁴⁹ Exh. JE-2, Joint Supplemental Testimony, p. 13.

⁵⁰ Exh. PCL-8, Amended Application, Appendix H, pp. 6-7.

⁵¹ Exh. JE-2, Joint Supplemental Testimony, p. 16.

⁵² Exh. JE-2, Joint Supplemental Testimony, p. 23; *see* Large Settlement Agreement, §7.2

C. EXHIBIT CA-47 IS ADMISSIBLE AND SHOULD BE ADMITTED

ORA objects to the admission of Exhibit CA-47 (the “Agreement”) and requests the Commission “strike any cross examination on the exhibit from the transcript,” on the ground admission of Exhibit CA-47, the Agreement on “Pre-Construction Activities Related To Certain Pipeline Facilities” (Agreement), would violate Rule 12.6.⁵³ As discussed in the Joint Opening Brief, the Agreement is not a settlement agreement subject to the Commission’s approval and does not reflect any party’s “settlement position.”⁵⁴ A comparison of the language used (or not used) in Agreement against the language of the Large Settlement Agreement and Sizing Settlement Agreement submitted for approval in this proceeding confirms the Agreement is not a “settlement agreement.”⁵⁵

ORA also asserts that the document is “confidential,” but the Agreement does not contain a confidentiality clause and ORA does not identify any other evidence or law that makes the Agreement confidential. It is a signed public document available on the MPWSP website.⁵⁶ Cal Am is not required to keep the Agreement confidential or to obtain Commission approval for such standalone documents.⁵⁷

⁵³ ORA Opening Brief, pp.23-24.

⁵⁴ Joint Opening Brief, pp.45-46.

⁵⁵ For example, the Large Settlement Agreement and Settlement Agreement on Plant Size and Level of Operation Entered by the Following Parties: California-American Water Company, Citizens for Public Water, City of Pacific Grove, Coalition of Peninsula Businesses, Division of Ratepayer Advocates, Monterey Peninsula Regional Water Authority, Monterey Peninsula Water Management District, Monterey Regional Water Pollution Control Agency, and Planning and Conservation League Foundation (the “Sizing Settlement Agreement”), submitted on July 31, 2013 with the Settling Parties’ Motion to Approve the Sizing Settlement Agreement, are both called “settlement agreement” in the title of the documents, state the purpose of the agreement is to “avoid the expense and uncertainty of litigation of the matters in dispute,” reference settlement discussions, state the agreements represent a “compromise,” and that the parties will “use their best efforts to obtain Commission approval” of the agreements. *See* Large Settlement Agreement at §§1.1, 2.5, 17.2 and 17.5; Sizing Settlement Agreement at §§ 1.1, 2.8, 6.2 and 6.5. No similar language appears in the Agreement because it is not a settlement agreement.

⁵⁶ *See* <http://www.watersupplyproject.org/#!/blank/c1hx5>.

⁵⁷ The Agreement states the parties, including ORA, agree “delay in completion of the CAW-Only Facilities could allow [Cal Am] to sooner maximize the ASR system and potentially reduce its pumping

The Agreement is not an agreement that needed to be submitted to or approved by the Commission, it was not required to be kept confidential, and ORA provides no evidence or authorities to the contrary. Rule 12.6 simply provides no basis for excluding the Agreement. ORA's objection should be overruled, its request to strike portions of the transcript denied, and CA-47 admitted into the record.

III. CONCLUSION

For the foregoing reasons and those set forth in the June 6, 2016 Joint Opening Brief, the Joint Parties respectfully request that the Commission promptly issue a decision: (a) authorizing Cal Am to enter into the GWR WPA, as revised and attached to the May 19, 2016 Joint Rebuttal Testimony (Exh. JE-3, Att. 1); (b) authorizing Cal Am to construct the Monterey pipeline and pump station; and (c) allowing Cal Am to file two Tier 2 advice letters to place the costs of the Monterey pipeline and pump station in service for recovery in base rates.

from the Carmel River,” and that the parties “shall not advocate... a position inconsistent with any provision in this Agreement.” Exh. CA-47, §3.2. If the Agreement is not admitted and Cal Am is not permitted to use the Agreement in this proceeding, Cal Am's only other remedy is to file an action against ORA in Superior Court to enforce the terms of the Agreement. The delay and expense of pursuing such a remedy should be unnecessary, however, because Rule 12.6 does not bar admission of the Agreement.

Respectfully submitted June 13, 2016, at San Francisco, California.

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